App. F. IX-4

Previous References. 1941-2 War) War File No. 49-41
Serial Nos. 1 & 2.

Later References.

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. Two only.

Part B for December 1942.

SUBJECT.

Rule 75 A of Defence of India Rules
Rly Board Letter

T.M. Krishnan
10.XII.42

Secret.

W 49-41-1

2289/W

Ry. 1.]

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE.

Railway Secretariat.

No. R. S. 3777

Dated Bangalore, ...5th June..... *194* 2

Encl. Two Sheets.

OFFICE OF THE
MINISTER FOR LAW
JUN 12 1942
No. 12559

FROM

The Secretary to the Government of His Highness
the Maharaja of Mysore,
Railway Department.

To War

CHIEF SECRETARY
6. JUN. 1942
GOVT. OF MYSORE.

The Chief Secretary
to the Government of Mysore,
Bangalore.

SIR,

Requisitioning buildings, land and moveable property under Defence of India Rules.

I am directed to forward herewith for information a copy of letter No.3167-W, dated 2nd May 1942, received from the Railway Board, on the above subject.

I have the honour to be
Sir,
Your most obedient servant,

K. T. Narasimhaiya

for Secretary for Railways,
Government of Mysore.

The New Rule 75A has already been published in the Mysore Gazette. The Rly Board letter elucidates the reasons for the addition of the new Subs for perusal. Before we issue this we ought to send the R.B. letter to the Govts.

CHIEF SECRETARY
8. JUN. 1942
GOVT. OF MYSORE.

Subd with letter to all Secs + DMs.

Issued 3549-58 & 17-6-42 to all Secs + Dys.

SECRET.

Government of India
Railway Department.
(Railway Board).

No.3167-W, New Delhi, dated 2nd May 1942.

The undermentioned papers are forwarded to all Class I Railways for information and guidance.

Sd/-

Director, Railway Board.

Copy of Government of India, Defence Coordination Department Secret letter No.1336-OR/2/42 dated the 23rd April 1942, with one enclosure.

OFFICE MEMORANDUM.

Attention is invited to rules 76, 79 and 83 of the Defence of India Rules, which provide respectively for requisitioning buildings land and moveable property. The following difficulties have arisen with respect to these rules:-

(i) It is frequently necessary to requisition land together with the buildings standing on it. As the rules stand, a separate order under each of rules 76 and 79, or a combined order under both rules, is required. This position is inconvenient in itself, and there is reason to believe that it is not fully understood by all concerned.

(ii) Certain classes of property may have to be requisitioned which, while they are technically immovable property, so that they are arguably excluded from the scope of rule 83, are not "buildings" or "land" so that they are equally excluded from the scope of rules 76 and 79. It is desirabl to provide indisputably for the requisitioning of such classes of property.

(iii) The provision for "acquisition" in these rules postulates the service of a notice on the owner of the property to be acquired. This is embarrassing when the owner cannot be found or when ownership is disputed.

2. It is accordingly proposed to remove these difficulties by replacing rules 76, 79 and 83 by a new rule 75A enabling any property moveable or immovable, to be requisitioned or acquired; thus disposing of difficulties (i)+(ii) in the proceeding paragraph. This rule will further provide that where the owner of any property to be acquired is not readily traceable, or where ownership is in dispute, notice of acquisition may be published in the official Gazette; thus disposing of difficulty (iii).

3. The new rule will be published by means of a notification in the Gazette of India dated the 25th April 1942 (copy enclosed) and will come into force three weeks from the date of publication. The object of this delay is to enable persons to whom powers under the existing rules 76, 79 and 83 have been delegated to be apprised of the change and of the way in which it affects them.

4. The new rule provides that any action taken under or in relation to rules 76, 79 or 83 before the date on which the new rule comes into force shall be deemed to have been taken under or in relation to the new rule, and further provides for the omission of rules 76, 79 and 83. The effect of this is as follows:-

(a) any requisition or acquisition orders already made will continue to have effect as if made under the new rule;

(b) any delegations of powers under rules, 76, 79 and 83 made under sub-sections (4) and (5) of section 2 of the Defence of India Act will continue to have effect as if they were delegations under the new rule of powers in respect to which the original delegation orders delegated powers, subject to the conditions, if any, imposed by these orders. Persons to whom any powers under rule 76, 79 and 83 have been ~~dir~~ delegated would therefore continue to possess exactly the same powers without its being necessary to make any fresh delegation of powers under the new rule. When making orders on or after the date on which the new rule comes into force, however, they should express themselves as acting under the powers conferred by rule 75A, read with the notification by which they were delegated powers under rule 76, 79 or 83 as the case may be. It is however suggested that to avoid confusion it will be desirable for each Department which has made any delegation of powers under rules 76, 79 and 83 to make a fresh delegation of powers with reference to the new rule, specifying the classes of property in respect of which and the conditions subject to which the delegate shall exercise powers. This is the course which this Department proposes to follow, and a copy of the notification which it proposes to issue is enclosed for information. Where this course is adopted, delegates will, after the date on which the delegation notification with respect to the new rule comes into force, act in the exercise of powers under the new rule.

5. This Department is addressing Provincial Governments with respect to items 3, 4 and 5 in the Schedule of the notification which it proposes to issue, Defence Department in respect of item 1, and Communications Department in respect of item 2, are requested to inform the officers under their control concerned of the issue of the new rule and delegation notification, and of the course which they should follow, viz:-

(1) up to the date on which the new rule and delegation comes into force, they should continue to exercise their powers under existing delegations;

(2) after that date, they should act under the powers conferred on them, and subject to the limits imposed, by the delegation of powers under the new rule. If they have already started proceedings in respect of any property under the old rules, they should nevertheless take any further proceedings with respect to that property after the date on which the new rule comes into force under the new rule.

6. So far as this Department is aware, the only other Departments who have issued delegation notifications under the existing rules 76, 79 and 83 are the Supply and Labour Departments, who have issued the notifications detailed in the enclosed list. They are requested to decide which course they would prefer to follow with reference to paragraph 4 above, and to issue the necessar instructions to officers under their control with reference to paragraphs 4 and 5 above.

7. It is proposed to ~~xxxx~~ leave rules 66 and 72 as they stand, except that sub-rule (2) of rule 66 and sub-rule (3) of rule 72 will be amended so as to permit of the publication of notices of acquisition in the Gazette where the owner of the property cannot be found, or where ownership is in dispute (vide notification enclosed).

Gazette of India.
Government of India.
Defence coordination Department.

Notifications.

New Delhi, the 25th April 1942.

No.1336-DR/42.- In exercise of the powers conferred by section 2 of the Defence of India Act, 1939 (XXXV of 1939), the Central Government is pleased to direct that with effect from the 16th May 1942, the following further amendments shall be made in the Defence of India Rules:-

In the said Rules -

1. In Part XII, before rule 76 the following rule shall be inserted, namely:-

Requisitioning of property.

75A. (1) If in the opinion of the Central Government or the Provincial Government it is necessary or expedient so to do for securing the defence of British India, public safety, the maintenance of public order or the efficient prosecution of the war, or for maintaining supplies and services essential to the life of the community, the Government may by order in writing requisition any property moveable or immoveable, and may make such further orders as appear to that Government to be necessary or expedient in connection with the requisitioning:

Provided that no property used for the purpose of religious worship and no such property as is referred to in rule 66 or in rule 72 shall be requisitioned under this rule.

(2) Where the Central Government has requisitioned any property under sub-rule (1), that Government may use or deal with the Property in such manner as may appear to it to be expedient, and may acquire it by serving on the owner thereof, or where the owner is not readily traceable or the ownership is in dispute, by publishing in the official gazette, a notice stating that the Central or Provincial Government as the case may be has decided to acquire it in pursuance of this rule.

(3) Where a notice of acquisition is served on the owner of the property or published in the official gazette under sub-rule (2) then at the beginning of the day on which the notice is so served or published, the property shall vest in Government free from any mortgage, pledge, lien or other similar encumbrance, and the period of the requisition thereof shall end.

(4) Whenever in pursuance of sub-rule (1) or sub-rule (2) the Central Government or the Provincial Government requisitions or acquires any moveable property, the owner thereof shall be paid such compensation as that Government may determine.

(5) The Central Government or the Provincial Government may, with a view to requisitioning any property under sub-rule (1) or determining the compensation payable under sub-rule (4), by order

(a) require any person to furnish to such authority as may be specified in the order such information in his possession relating to the property as may be so specified:

(b) direct that the owner, occupier or person in possession of the property shall not without the permission of Government dispose of it till the expiry of such period as may be specified in the order.

(6) Any orders made, and any action taken, under or in relation to rule 76, 79 or 83 before the 16th May 1942, shall be deemed to have been made or taken under or in relation to this rule and to be as valid as if this rule had been then in force.

(7) If any person contravenes the provisions of this rule he shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

2.

2. Rules 76, 79 and 88 shall be omitted.

3. In sub-rule (1) of rule 96, the figures "76", ~~and the figures "88"~~, and the figures "79", shall be omitted.

" Copy "

RTN.

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE.

No. 3549-58/W.Encls. W 49-41-2

General and Revenue Secretariat,

Dated Bangalore, 17th June 1942 *19*

FROM

The Chief Secretary to the Government of His Highness the Maharaja of Mysore.

To

D. C. P. s

The District Magistrates of Districts.

SIR,

Requisitioning buildings, land and moveable property under the Defence of India Rules.

I am directed to forward for information a copy of letter No.3167-W. dated the 2nd May 1942 received from the Railway Board on the above subject.

The new Rule 75A referred to in the Railway Board's letter has been republished in the Part IV of the Mysore Gazette dated the 14th May 1942.

I have the honour to be,
Sir,
Your most obedient servant,

2

For Chief Secretary to Government.

SECRET.

GOVERNMENT OF INDIA.
Railway Department.
(Railway Board)

No.3167-E, New Delhi, dated 2nd May 1942.

The undermentioned papers are forwarded to all Class I Railways for information and guidance.

Copy of Govt. of India, Defence Co-ordination Dept. Secret letter No.1336-DR/2/42 dated the 23rd April 1942, with one enclosure.

OFFICE MEMORANDUM.

Attention is invited to rules 76, 79, and 83 of the Defence of India Rules, which provide respectively for requisitioning buildings, land and moveable property. The following difficulties have arisen with respect to these rules:-

(i) It is frequently necessary to requisition land together with the buildings standing on it. As the rules stand, separate order under each of rules 76 and 79, or a combined order under both rules, is required. This position is inconvenient in itself, and there is reason to believe that it is not fully understood by all concerned.

(ii) Certain classes of property may have to be requisitioned which, while they are technically immovable property, so that they are arguably excluded from the scope of rule ~~80~~ 83, are not "buildings" or "land" so that they are equally excluded from the scope of rules 76 and 79. It is desirable to provide indisputably for the requisitioning of such classes of property.

(iii) The provision for "acquisition" in these rules postulates the service of a notice on the owner of the property to be acquired. This is embarrassing when the owner cannot be found or whom ownership is disputed.

2. It is accordingly proposed to remove these difficulties by replacing rules 76, 79 and 83 by a new rule 75A enabling any property moveable or immoveable, to be requisitioned or acquired; thus disposing of difficulties (i) & (ii) in the preceding paragraph. This rule will further provide that where the owner of any property to be acquired is not readily traceable, or where ownership is in dispute, notice of acquisition may be published in the official Gazette; thus disposing of difficulty (iii).

3. The new rule will be published by means of a notification in the Gazette of India dated the 25th April 1942 (copy enclosed) and will come into force three weeks from the date of publication. The object of this delay is to enable persons to whom powers under t e existing rules 76, 79 and 83 have been delegated to be apprised of the change and of the way in which it effects them.

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rules 76, 79 and 83. The effect of this is as follows:-

(a) any requisition or acquisition orders already made will continue to have effect as if made under the new rule;

(b) any delegations of powers under rules, 76, 79 and 83 made under sub-sections (4) and (5) of section 2 of the Defence of India Act will continue to have effect as if they were delegations under the new rule of powers in relation to which the original delegation orders relate gated powers, subject to the conditions, if any imposed by these orders. Persons to whom any powers under rule 76, 79 and 83 have been delegated would therefore continue to be empowered by the delegation of powers under the new rule. When making orders on or after the the date on which the new rule comes into force, however, they should express themselves as acting under the powers conferred by rule 75A, read with the notification by which they were delegated powers under rule 76, 79 or 83 as the case may be. It is however suggested that to avoid confusion it will be desirable for each Dept. which has made any delegation of powers under rules 76, 79 and 83 to make a fresh delegation of powers with reference to the new rule, specifying the classes of property in respect of which and the conditions subject to which the delegate shall exercise powers. This is the course which the Dept. proposes to follow, and a copy of the notification which it proposes to issue is enclosed for information. Where this course is adopted, delegates will, after the date on which the delegation notification with respect to the new rule comes into force, act in the exercise of powers under the new rule.

5. This Dept. is addressing Provincial Govts. with respect to items 3, 4 and 5 in the schedule of the notification which it proposes to issue, Defence Dept. in respect of item 1, and Communications Dept. in respect of item 2, are requested to inform the officers under their control concerned of the issue of the new rule and delegation notification, and of the course which they should follow, viz.,

(1) up to the date on which the new rule and delegation comes into force, they should continue to exercise their powers under existing delegations;

(2) after that date, they should act under the powers conferred on them, and subject to the limits imposed, by the delegation of powers under the new rule. If they have already started proceedings in respect of any property under the old rules, they should nevertheless take any further proceedings with respect to that property after the date on which on which the new rule comes into force under the new rule.

6. So far as this Dept. is aware, the only other Depts. who have issued delegation notifications under the existing rules 76, 79 and 83 are the Supply & Labour Depts. who have issued the notifications detailed in the enclosed list. They are requested to decide which course they would prefer to follow with reference to para 4 above, and to issue the necessary instructions to officers under their control with reference to paras 4 and 5 above.

7. It is proposed to leave rules 66 and 72 as they stand, except that sub-rule (2) of rule 66 and sub-rule (3) of rule 72 wi l be amended so as to permit of the publication of notices of acquisition in the Gazette where the owners of the property cannot be found, or where ownership is in dispute (vide notification enclosed).